

Denbighshire County Council

Report To: Planning Committee

Date: Wednesday, 20th April 2022

Report By: Planning Officer (Luci Duncalf)

Subject: General Matters Report – Objections to Tree Preservation Order No. 7 (a) (2021) Land adjacent to 73a Erw Goch, Ruthin made by Denbighshire County Council

1. Purpose of Report

1.1. In response to a request by the public, a provisional Tree Preservation Order (TPO) has been made under delegated powers.

1.2. The affected parties have been formally notified of the provisional TPO and given the opportunity to object to it. (If they so wish, interested parties can also submit representations in support of the TPO).

1.3. The purpose is to inform members of the committee that the Council have received several objections to provisional Tree Preservation Order No. 7 (a) (2021) Land adjacent to 73a Erw Goch made on 8th December 2021 and to recommend confirmation of the Tree Preservation Order. The Tree Preservation Order (TPO) affords protection to a single pedunculate oak (T1) and three Sycamores (T2, T3 and T4) on land adjacent to 73a Erw Goch to the side of a public footpath that links Erw Goch with Wrexham Road and Lon Speiriol- Isaf.

1.4. It is recommended that the provisional TPO is confirmed and therefore remain in force.

2. Report

2.1. On 7th May 2021 Planning Committee resolved to grant an application for the erection of a detached dwelling on land which formed part of the garden of 73a Erw Goch. The reference number was 02/2020/0811. Concerns were raised during the application regarding the impact of the development on the trees adjacent. A Tree Preservation Order was requested to be put on the trees by a member of public to afford the trees a degree of protection and to ensure they are safeguarded from the new development.

2.2. The Council's Tree Consultant assessed the trees using the 'TEMPO' guidance and concluded that 4 of the trees merited protection and an order should be made because the trees are a prominent and attractive feature on the footpath that links Erw Goch with Wrexham Road and Lon Speiriol-Isaf.

2.3. Following service of the TPO notice the Council received the following objections from interested parties:

J. Jones, 69 Erw Goch, Ruthin

Mr and Mrs Parry, 72 Erw Goch, Ruthin

C. Bellis

H. Mosford- Evans

N. Mosford- Jones

L. Gibson (Mosford)

2.4. The objections relate to queries regarding the ownership of the trees, who maintains them currently and who will in the future, safety concerns regarding dead branches and questions around why these trees merit protection and not the others on the footpath. Three of the responses received state that they do not wish the trees to be removed.

2.5. Regarding the concerns over the dead branches, if necessary, the dead branches could be removed with the Local Planning Authority's consent, if required. The trees were assessed by the Council's Tree Consultant as being healthy without any major defects. There is nothing to indicate the trees are dangerous and/or requiring urgent maintenance.

2.6. When serving provisional TPOs the Council is required to notify interested parties but does not have to ascertain who actually owns a tree subject to a provisional TPO. The interested parties have been duly notified and it is not the Council's role, when making provisional TPOs, to arbitrate over land ownership.

2.7. The Council's Legal Officer has confirmed that the trees fall within a 'gap' between the registered title boundaries of the properties and the footpath maintained by the Local Authority. Trees planted on the highway are the responsibility of the owner of the highway.

2.8. Therefore, as some of the trees overhang the footpath, the Local Authority has a duty to prevent obstruction of said footpath (section 130 Highways Act 1980). The Local Authority has statutory duties under the Housing Act 1980 and the Local Government (Miscellaneous Provisions) Act 1976 regarding protecting the public if for whatever reason the trees become dangerous: *Where a tree, hedge or other vegetation is causing an obstruction of the highway, the highway authority is under a duty to prevent that obstruction (section 130 of the Highways Act 1980).*

2.9. It is considered that the concerns of residents as to who is responsible for the trees would remain whether or not the TPO is confirmed. Therefore it is not considered that such concerns have a significant bearing on the decision as to whether or not the Tree Preservation Order should be confirmed.

2.10. The confirmation would not prevent reasonable and necessary works being undertaken to the trees, merely that consent for those works would first be required.

2.11. If the objections are not considered by Committee and the TPO remains unconfirmed, it will lapse on 8th June 2022 (i.e. after 6 months) and the trees will not be protected.

2. Conclusion

2.10. Taking into account the objections received regarding the ownership, maintenance and safety of the trees, having regard to the advice provided by the Council's Tree Consultant, it is recommended that the TPO is confirmed without modification.

3. Recommendation

3.10. Tree Preservation Order No. 7 (a) (2021) Land adjacent to 73a Erw Goch is confirmed without modification to afford the trees protection.

Background documents

Tree Preservation Order No. 7 (a) (2021) Land adjacent to 73a Erw Goch
Tree consultant TEMPO inspection notes